

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAVAUGHN K. ROBINSON,
Plaintiff,
v.
SCOTTINI,
Defendant.

No. 2:22-cv-1641 KJN P

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff is a state prisoner, proceeding pro se, in an action brought under 42 U.S.C. § 1983. Plaintiff's motion for summary judgment is fully briefed. However, in her motion, as pointed out by defendant, plaintiff concedes that defendant denies plaintiff's allegations of sexual assault. Indeed, defendant's declaration confirms he disputes plaintiff's verified claims in her complaint. (ECF No. 33-3.) In her reply, plaintiff again confirms that there are genuine material facts at issue. (ECF No. 37 at 1.)

The Court's function on a summary judgment motion is not to make credibility determinations or weigh conflicting evidence with respect to a material fact. See T.W. Elec. Serv., Inc. V. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987).

Plaintiff is advised that the court cannot make credibility determinations on summary judgment. Rather, to the extent that the parties dispute material facts as to plaintiff's underlying claims, summary judgment is inappropriate. Given the material disputes of fact, as well as

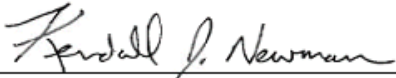
1 plaintiff's concession that such material facts are disputed, plaintiff's motion for summary
2 judgment should be denied.

3 Accordingly, IT IS HEREBY ORDERED that the Clerk of the Court is directed to assign
4 a district judge to this case; and

5 IT IS RECOMMENDED that plaintiff's motion for summary judgment (ECF No. 32) be
6 denied.

7 These findings and recommendations are submitted to the United States District Judge
8 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
9 after being served with these findings and recommendations, any party may file written
10 objections with the court and serve a copy on all parties. Such a document should be captioned
11 "Objections to Magistrate Judge's Findings and Recommendations." Any response to the
12 objections shall be filed and served within fourteen days after service of the objections. The
13 parties are advised that failure to file objections within the specified time may waive the right to
14 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

15 Dated: December 21, 2023

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17 KENDALL J. NEWMAN
18 UNITED STATES MAGISTRATE JUDGE

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